

ARI ZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
February 23, 2005
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:
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1 COMMITTEE MEMBERS PRESENT:

2 Gail Clement, Chairperson

3 Hal Gill, Vice Chairman
4 Jon Findley
5 Karen Gaylord
6 Theresa Foster
7 Barbara Pashkowski
8 Philip McNeely
9 Myron Smith
10 Cynthia Campbell
11 Michael O'Hara
12 Andrea Martincic (Telephonic appearance.)
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1 P R O C E E D I N G S

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3 CHAIRPERSON CLEMENT: Good morning. I think
4 we're going to get started. We're missing a few
5 participants. I was hoping that we would have a
6 representative from the AG's Office today. I'm still

7 expecting them to participate. They're not here. I
8 haven't heard from Theresa or Cynthia, so I'm not sure if
9 they're late or if they are going to be joining us, but I
10 did want to get the meeting started.

11 Andrea is going to be calling in shortly by
12 telephone, and I assume all I have to do is answer it?

13 MR. JOHNSON: No. We need to call her.

14 CHAIRPERSON CLEMENT: Oh, we do have to call her.
15 I talked to her late afternoon. Did you talk to her after
16 that?

17 MR. JOHNSON: But I have her cell phone here.

18 (At this time, Ms. Andrea Martincic was called.)

19 CHAIRPERSON CLEMENT: Andrea.

20 MS. MARTINCIC: Yes.

21 CHAIRPERSON CLEMENT: This is Gail over at the
22 UST Policy Commission.

23 MS. MARTINCIC: Hi, Gail, thanks for letting me
24 join in.

25 CHAIRPERSON CLEMENT: Thank you for

4

1 participating. I know you've got a tight schedule this
2 morning, so we're just going to do the preliminaries and
3 then put you on.

4 MS. MARTINCIC: That's fine. Great.

5 CHAIRPERSON CLEMENT: This is a call to order for
6 the February 23rd, 2005 UST Policy Commission meeting.
7 Welcome everyone. We will take a roll call starting with
8 Myron.

9 MR. SMITH. Myron Smith.

10 MR. O'HARA: Mike O'Hara.

11 MR. MC NEELY: Philip McNeely.

12 CHAIRPERSON CLEMENT: Gail Clement.
13 MR. GILL: Hal Gill.
14 MS. GAYLORD: Karen Gaylord.
15 MR. FINDLEY: Jon Findley.
16 CHAIRPERSON CLEMENT: And Andrea Martincic is on
17 the speakerphone.
18 Okay. The next agenda item, approval of the
19 minutes from the January 2005 meeting. Did everybody
20 receive the minutes?
21 Any questions?
22 Discussion?
23 Is there a motion to approve?
24 MS. MARTINCIC: I move that we approve the
25 minutes.

5

1 CHAIRPERSON CLEMENT: And a second?
2 MR. O'HARA: Second.
3 CHAIRPERSON CLEMENT: All in favor?
4 (Chorus of ayes.)
5 CHAIRPERSON CLEMENT: Great. Thank you.
6 Next we're going to ask Andrea to give us a quick
7 update of the financial subcommittee issues and the next
8 meeting she's planning on having.
9 MS. MARTINCIC: I know we did have a meeting this
10 past month, and it's come to my attention that there may
11 be a reason to have one in March. I believe that it would
12 fall on this next week, actually. I think Al probably has
13 the specific date. But, there might be -- it might be a
14 good time to once again revisit insurance issues, the

15 concerns about insurance eligibility now moving into
16 place, and since the legislation passed, 1306, maybe some
17 of the insurance carriers in the state might be more
18 comfortable coming in to kind of give a better talk. I
19 think they were reluctant to get into too many details
20 with pending legislation last year when we tried to do
21 some of that.

22 So, I just was interested in finding out from the
23 rest of the Commission and from anyone who's in the
24 audience there today if that seems to be a legitimate
25 concern, something that we ought to look into again.

6

1 CHAIRPERSON CLEMENT: Ms. Gaylord?

2 MS. GAYLORD: I'm very interested in this topic.
3 One of my clients owns a single station with underground
4 storage tanks and is having very great difficulty securing
5 insurance.

6 CHAIRPERSON CLEMENT: So, any other comments from
7 the Commission or discussion?

8 Mr. McNeely.

9 MR. MC NEELY: Thank you. I do have a comment.
10 I would like the Commission -- that's down in your agenda
11 items we are going to address in the future, but I think
12 some operating stations are having a hard time getting
13 insurance when they have a precondition. So, since June
14 30 of 2006 is a requirement where new releases are no
15 longer eligible, I think it's something the Commission
16 needs to sort of tackle soon to make sure that we do have
17 insurance available to these operating stations by June
18 30, 2006.

19 CHAIRPERSON CLEMENT: Okay.

20 MS. MARTINCIC: Why don't we move forward with a
21 meeting, then, next week. We might not be able to get all
22 of the carriers present in that short time frame, but we
23 can at least identify what is still an issue or new issues
24 and move forward from there.

25 CHAIRPERSON CLEMENT: Okay.

7

1 MS. MARTINCIC: We could attempt to get some
2 carriers there.

3 CHAIRPERSON CLEMENT: Andrea, will you handle
4 attempting to get the carriers, or is that something that
5 Al Johnson at DEQ should help you with?

6 MS. MARTINCIC: I can work on it. I think last
7 year I worked with Al on that.

8 CHAIRPERSON CLEMENT: Okay.

9 MS. MARTINCIC: We can probably work together. I
10 don't know if there is a new contact now for some of those
11 carriers or not, so when I meet with the marketer
12 convention, I might be able to get a little better feel
13 for that as well. I will work on that while I'm here,
14 actually.

15 CHAIRPERSON CLEMENT: Thank you, Andrea.

16 Al, do you have a tentative date and time?

17 MR. JOHNSON: It's tentatively March 3rd at 2
18 o'clock in the afternoon.

19 CHAIRPERSON CLEMENT: That would be the normal --

20 MR. JOHNSON: It's the first Thursday of every
21 month at 2 o'clock.

22 CHAIRPERSON CLEMENT: And does that work with
23 your schedule, Andrea?

24 MS. MARTINCIC: Yeah. That will be fine. I
25 guess the question is, if people feel it would be more

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1 productive to make sure we have carriers there or if we
2 want to use this more as an organizational meeting first
3 and then schedule follow-up, you know. I don't want to
4 put it off too long with follow-up, so I'm thinking first
5 of March or first of April, try to get the carriers in to
6 answer any other new questions we have, or some additional
7 questions that still are out there.

8 CHAIRPERSON CLEMENT: I don't see a preference
9 from the folks here, so, whatever.

10 MS. MARTINCIC: We will go with what's scheduled,
11 and then we can use it as an organizational meeting and
12 bring out issues that are outstanding and get moving on
13 this.

14 CHAIRPERSON CLEMENT: One more.

15 MR. MC NEELY: One more comment. The requirement
16 for June 30, 2006, that's a possibility, but there is a
17 statute currently, 696 --

18 MS. MARTINCIC: Financial responsibility, right?

19 MR. MC NEELY: You need to have that now. We're
20 trying to go around and check that and enforce that, so
21 it's going to turn into an issue for the department and
22 owner/operators if they actually can't get the insurance.

23 MS. MARTINCIC: Right. Right.

24 MR. MC NEELY: Okay.

25 MS. MARTINCIC: It's very timely and it's an

1 issue that I didn't mean to say that the issue isn't
 2 important. It's just that with that happening very soon,
 3 now, we might be seeing some of the impacts of that later.

4 CHAIRPERSON CLEMENT: Great. Thank you so much,
 5 Andrea. I know that you've got a tight calendar and you
 6 had another conflict, so --

7 MS. MARTINCIC: I can probably stay on through
 8 about 9:30 or so.

9 CHAIRPERSON CLEMENT: Great. You are welcome.

10 MS. MARTINCIC: Before I get off, I will let
 11 everyone know.

12 CHAIRPERSON CLEMENT: It just becomes a little
 13 awkward, so when you want to talk, just talk so that we
 14 can hear you, because it's a little awkward to try to know
 15 when you want to talk.

16 MS. MARTINCIC: Yeah, that's fine.

17 CHAIRPERSON CLEMENT: Thank you. We will jump
 18 back, because I wasn't sure what her availability was
 19 going to be, so we moved the agenda items a little bit.

20 And then we're going to jump back to No. 3, and
 21 do we have someone here from the Attorney General's
 22 Office?

23 MS. HUDDLESTON: I apologize. We checked on it,
 24 and they were going to get back to me. I got busy and
 25 failed to check back to them, but I can, if you like -- I

1 can give maybe a five-minute presentation and answer
 2 questions, and then if you want more information, we can

3 have someone next month if you would like that.

4 CHAIRPERSON CLEMENT: I think it would be very
5 helpful, Tamara, if you wouldn't mind doing that. It
6 would just get everybody on the same page and just remind
7 people, and then also remind people that they do have to
8 -- I don't know if the word is have to, but I think they
9 have to take the ethics training that's offered by the
10 Department of Administration. It's a have to?

11 MS. HUDDLESTON: It's a have to. In fact, my
12 next sentence was going to be, this would not replace
13 that. You still have to do that. You know that.

14 CHAIRPERSON CLEMENT: I think for those that have
15 had a chance -- has everyone had a chance to take the
16 ethics training yet or not? Jon?

17 MR. FINDLEY: No.

18 CHAIRPERSON CLEMENT: Al Johnson. Why don't you
19 speak directly with Al and he will let you know who to
20 talk to to get signed up for that training. They offer it
21 periodically.

22 MR. FINDLEY: Okay.

23 CHAIRPERSON CLEMENT: Thank you.

24 MS. HUDDLESTON: On the open meetings law, it's a
25 requirement that publicly appointed bodies meet openly so

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1 the public can attend. And to do that, the notice of the
2 meeting and the agenda have to be posted at least 24 hours
3 before the meeting of the full board, and also any
4 committee meetings, and Al, of course, takes care of that,
5 and we notify the Secretary of State where the posting
6 occurs as per the requirement of the law. DEQ has been

7 taking care of that for the board.

8 Minutes of each meeting of the full board have to
9 be taken and maintained. There is, I don't believe, no
10 requirement to take minutes of subcommittees, but it's
11 always a good idea anyway. And basically what is required
12 under this is that everything be done open so the public
13 has an opportunity to know what's going on, which means
14 that you are limited by your agenda to what is on the
15 agenda and the action that is on the agenda, which is why
16 we sometimes include routinely in the agenda that the
17 Commission may discuss, deliberate and vote on any item
18 listed on the agenda so the public knows that is a
19 possibility. But if it's not on the agenda, again, all
20 you can do is postpone it until the next meeting.

21 Now, you know, there are some ways around that to
22 certify what -- ratify what has been done before. That's
23 not the recommended approach. It's not the good way of
24 doing things, but, you know, we understand things get out
25 of hand sometimes.

12

1 So, if you want to discuss something, you want to
2 vote on something, it has to be on the agenda. There are
3 some limited reasons that you can go into executive
4 meetings, which would exclude the public, but you cannot
5 vote in there. You have to take the vote publicly.

6 CHAIRPERSON CLEMENT: Does the vote -- and I'm
7 sorry, should I wait for any questions?

8 MS. HUDDLESTON: No. Please.

9 CHAIRPERSON CLEMENT: If you have to take the
10 vote publicly, we've never run into this and probably

11 won't in this Commission, but is there enough substance in
12 the vote that they know what would have been discussed in
13 executive session?

14 MS. HUDDLESTON: You need to explain it as much
15 generally as you can without divulging any of the
16 privileged communications that occurred within the
17 executive session.

18 CHAIRPERSON CLEMENT: And you would help us with
19 that or someone from the AG's office if we ever ended
20 up --

21 MS. HUDDLESTON: Like I say, there is very
22 limited, seven or nine reasons, personnel matters, legal
23 advice, very limited privileged matters.

24 CHAIRPERSON CLEMENT: Thank you.

25 MS. HUDDLESTON: That in a nutshell is the open

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1 meeting law. Does anybody have any questions?

2 CHAIRPERSON CLEMENT: My question is, as
3 chairperson, I have more of a role where I have to find
4 things out ahead of time, so I'm sometimes wondering by
5 talking to my subcommittee chairpeople about what happened
6 at the subcommittee, how do you want to put that on the
7 agenda.

8 MS. HUDDLESTON: That's not a meeting. That's
9 administrative matters, and unless it's being done to
10 circumvent the law, trying to speak to vendors, that's
11 considered administrative matters.

12 CHAIRPERSON CLEMENT: And what about if a member
13 would contact one of us or another because they did not
14 participate in a meeting, for additional information about

15 a meeting, a full Commission meeting?

16 MS. HUDDLESTON: I think that is perfectly all
17 right. There again, you are not influencing a vote, you
18 are not taking action outside.

19 CHAIRPERSON CLEMENT: Okay. Good.

20 Any other questions? Jon, did you have anything
21 in terms of your new role? I know Karen's been --

22 MR. FINDLEY: I don't believe so.

23 CHAIRPERSON CLEMENT: Andrea, did you have any
24 questions?

25 MS. MARTINCIC: Well, I will read through the

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1 minutes. It was difficult to hear her. I think she was
2 kind of far away from the speakerphone, but I will review
3 it when the minutes come out.

4 CHAIRPERSON CLEMENT: Okay.

5 MS. MARTINCIC: I don't know if you are allowed
6 to talk to me after. I missed that part, so is that okay
7 or is that not okay?

8 CHAIRPERSON CLEMENT: That's okay.

9 MS. HUDDLESTON: That's okay.

10 CHAIRPERSON CLEMENT: It's okay for us to explain
11 what happened at a meeting that someone misses, and
12 correct me if I am wrong, but we shouldn't be trying to
13 influence the vote of, you know, an issue.

14 MS. MARTINCIC: Of an issue, okay.

15 CHAIRPERSON CLEMENT: It's not a lobbying effort;
16 it's an information exchange.

17 MS. MARTINCIC: Right.

18 CHAIRPERSON CLEMENT: That's fair. Thank you

19 very much, Tamara. I appreciate that.

20 MS. HUDDLESTON: And again, I apologize for
21 dropping a ball and not having someone here. If you would
22 like someone at the next meeting, I would be happy to have
23 someone here.

24 CHAIRPERSON CLEMENT: Do we feel that -- Hal, do
25 you feel that you need more, or Andrea? Probably isn't a

15

1 fair question. Karen, Ms. Gaylord?

2 MS. GAYLORD: I'm always interested in having
3 somebody speak about the conflict of interest issue. It's
4 very difficult on a board where you represent a certain
5 interest group, and you do have folks with an interest in
6 a matter to know exactly what you can discuss and when you
7 need to recuse yourself, so I would be very interested in
8 having the AG visit with us.

9 MS. HUDDLESTON: Okay. March 23rd. I will not
10 forget this time.

11 CHAIRPERSON CLEMENT: I think that's an excellent
12 suggestion. Thank you.

13 Any other ideas, questions, concerns?

14 Great. Thank you very much, Tamara. Appreciate
15 it.

16 The next agenda item is discussion of legislation
17 affecting the UST program, and Phil McNeely is a lot
18 closer to this than certainly myself.

19 MR. MC NEELY: Ms. Chairwoman or Chairperson, I
20 thought number four is the goals and objectives.

21 CHAIRPERSON CLEMENT: Oh, I'm sorry, I've got to
22 wear my glasses. You guys, I'm really sorry. I don't do

23 this on purpose. I just can't see. Okay. Thank you.
24 No. 4, discussion of Policy Commission's goals
25 and objectives. Especially now that we have new members,

16

1 it's really important I think for us to framework where we
2 want to go in this next year, what we think is important,
3 how we want to move this Commission forward and to do as
4 much of a constructive job as we can. So I'm going to,
5 you know, ask for people to provide some input into that,
6 and where you would like to see the Commission go in the
7 next year, what you want to accomplish as a Policy
8 Commission.

9 Mr. McNeely?

10 MR. MC NEELY: I will reiterate what we just
11 talked about. I think the Commission should take a
12 leading role in trying to work with the insurance
13 providers to make sure that we do have insurance
14 available. That's one.

15 Another issue is something I'm working on, the
16 Soil Rule pretty hard. I would like your involvement to
17 be completely involved in the Soil Rule through the spring
18 and summer, because it's going to affect the UST side
19 significantly, or could, I mean, but that's why I want
20 your involvement. I don't want to have the Commission say
21 they weren't involved when I put that rule forward.

22 CHAIRPERSON CLEMENT: And I think another thing,
23 we want to stay very close to the SAF Rule process and
24 where the agency is going to ultimately go with that.

25 Mr. Gill?

1 MR. GILL: Well, I think we need to continue
2 bringing the topics, the complicated, confusing topics to
3 the subcommittees to be addressed more fully, and I think
4 we need to keep getting the issues to the bulletin and to
5 the guidance documents so the regular public has access to
6 it.

7 CHAIRPERSON CLEMENT: Has that still been in your
8 opinion working well or --

9 MR. MC NEELY: Well, we -- I need to revisit how
10 things get to the vote, and I don't know that they've been
11 getting there rapidly because we haven't finalized things
12 in the subcommittees and brought them to the Policy
13 Commission. That's always a problem of the speed of
14 getting things through the process, because we discuss
15 them in the subcommittee meetings, then we bring them to
16 the Policy Commission for a vote, and then, if approved at
17 that point, how long does it take them to get to vote on.
18 I don't know what the process is now. I'm sure it's
19 changed since when it first started.

20 CHAIRPERSON CLEMENT: And perhaps we could have
21 -- does someone here from the audience of DEQ know the
22 process of getting things on the bulletin board?

23 MR. MC NEELY: Yeah. I don't think the process
24 has changed at all. We haven't had anything brought
25 forward.

1 MS. NAVARRETE: I think Cynthia Miller is
2 handling putting things on the bulletin board now.

3 MR. JOHNSON: The way this works is when a
4 policy, or whatever the document is that comes from the
5 Policy Commission, or it can come from the DEQ, or
6 whatever, generally has to eventually come from DEQ, it
7 goes through us, and then it goes up the chain of command
8 and it gets formatted in the appropriate bulletin format,
9 it goes to our office communication and the office
10 communication formats it.

11 But the trick also on this is what is the
12 bulletin. Is the bulletin a substantive policy statement,
13 essentially? Sometimes they are. If that's the case,
14 then we have to route it through our policy review
15 committee as well. And again, once they look at it,
16 sometimes the Deputy Director will look at it, the
17 Director will look at it before it goes on the web site,
18 but the process itself hasn't really changed since we
19 initiated it here a couple of years ago.

20 CHAIRPERSON CLEMENT: Would there be anything
21 that we would do that wouldn't be considered substantive?
22 I don't know what that break is in your minds.

23 MR. JOHNSON: Of course, the substantive policy
24 definition is very broad, and so we haven't really put
25 anything on the bulletin board that wouldn't be considered

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1 a substantive policy yet that I'm aware of, except for
2 some things like, say, cost ceilings, more announcement
3 type information, like cost ceilings, things like that.

4 But if we're on there putting out information
5 that further explains rules or helps with the
6 interpretation of the statute, how we run our business and

7 what our expectations are of the people we regulate, then
8 that generally is a substantive policy and has to go
9 through the process.

10 CHAIRPERSON CLEMENT: Thank you. Is that clear
11 to everyone?

12 MR. GILL: Yes. I'd just like to -- before the
13 next meeting, I'd like to try and find out, because I
14 can't -- right off the top of my head, I cannot remember
15 all the of the issues that we discussed and that were
16 voted on and sent forward, but I would like to identify
17 those and find out where they are, because there have been
18 a number of them, and I don't know where -- and I think
19 this is interesting about the substantive policy, because
20 there is an issue that we brought up at least a year ago,
21 and it was the feeling of the regular public that all of
22 these issues that we were bringing forward were
23 substantive policy, and for them to be implemented, which
24 they were being implemented, they needed to go through the
25 policy process and they weren't going through the process.

20

1 So, it's kind of come 180 degrees. Now they are
2 all substantive policies, and the purpose of the bulletin
3 was to get these issues out there, if the DEQ didn't
4 determine that they were substantive policies, get it out
5 there so that the public could see them and understand
6 what they were supposed to do.

7 And so now it's kind of come full circle. Now
8 they're all having to go through the full process, and it
9 kind of defeats the idea of the bulletin. The bulletin is
10 still there to get the stuff out to the regulated public,

11 but the original purpose was, well, if these are not
12 substantive policy, but they're whatever they were, and
13 that was the issue, we didn't really know what they were,
14 we need the regulated public to see them so they will know
15 what to do.

16 CHAIRPERSON CLEMENT: The bulletin board would be
17 a tool, and the DEQ could use it both for any kind of
18 information exchange, and one of them is posting those
19 things that we have reached a consensus on and
20 recommendations on with the DEQ, and they are terming that
21 substantive policy in most cases, I think is what I just
22 heard.

23 MR. GILL: That's what I'm hearing, because we
24 had the discussion before as to, you know, can we put
25 these things -- we were trying to move the process forward

21

1 because a lot of the, quote-unquote, policies were being
2 implemented and the regulated public was not aware of them
3 and they were causing problems in the appeals, and
4 everything. And that was the whole idea, let's get this
5 out there so we don't have all these appeals, so everybody
6 knows how they're supposed to move forward. But part of
7 that process was, we wanted this to go rapidly because
8 this is happening now, and now if they're all going to be
9 substantive policy, which is basically what our argument
10 was originally, it's kind of slowed way down because it
11 does take a long time to get the substantive policy
12 through the process.

13 CHAIRPERSON CLEMENT: Do you have a comment on
14 that, Phil? Do you think -- I mean, ideally you won't

15 implement anything until it's gone through the process of
16 substantive, so therefore the regulated community would be
17 informed, but do you have any document on what Hal said?

18 MR. MC NEELY: The DRC, they do meet weekly, a
19 policy review committee, and it has all representatives of
20 each division, and the Director's Office, and the purpose
21 of that is to make sure that we are being consistent
22 across the agency.

23 The only issue would be getting it in the format,
24 submitting it to them, and they've been pretty quick about
25 getting things approved. So, I think once we actually get

22

1 the format down, which I think we do now, it wouldn't be
2 that time-consuming.

3 And, I don't know, I mean, I think a couple of
4 comments, like everything on the bulletin is substantive
5 policy, that's not true. A lot of the stuff we have, as
6 he said, is very informative type information, not
7 substandard policies.

8 CHAIRPERSON CLEMENT: Okay. Myron, do you have
9 anything that you want to make sure we covered this year?

10 MR. SMITH: I will think about it and come up --

11 CHAIRPERSON CLEMENT: Mr. O'Hara?

12 MR. O'HARA: I think our goals and objectives are
13 governed, I think, somewhat by the statute that mandated
14 the Policy Commission, and I think we have five mandates
15 in there, three of which I think are somewhat obsolete now
16 that the phaseout has been implemented by the legislation,
17 because it asked us to phase out, it asked us to look at
18 privatization on insurance, so I think if we go back and

19 revisit that statute, the things that aren't obsolete will
20 kind of still drive the reason we're here and drive our
21 goals and objectives, and one of which I know is to review
22 policy.

23 So, we may have a narrower focus going forward
24 than we have in the past. And one thing that I think that
25 we probably ought to start doing is come up and address it

23

1 in the next meeting, we have an annual report, we usually
2 don't get it out promptly. But somewhere during the year
3 we report back what we did in 2004, and in that it
4 discusses the mandates and how we address the mandates,
5 and it also addresses what we are planning to do this
6 upcoming year, so it might be something we want to start
7 tackling in our goals.

8 CHAIRPERSON CLEMENT: That last draft is -- the
9 last year's report is in my e-mail, and I have not even
10 opened it yet, frankly.

11 MR. O'HARA: We will put that on the agenda.

12 CHAIRPERSON CLEMENT: That will drive me to start
13 looking. And typically what's happened, just for the
14 Commission's sake, is the Chairperson ends up doing the
15 rough draft with the assistant from DEQ and sends it out
16 to the Commission, so at this point it's in my to do.

17 Andrea?

18 MS. MARTINCIC: I agree with most of what I've
19 heard, you know. I think the insurance issue is
20 important, the SAF Rule, to continue to make sure the
21 guidance gets out to the regulated community in a timely
22 manner, so I think everything I've heard is good.

23 CHAIRPERSON CLEMENT: Jon, do you have any
24 specific issues you want to see covered?

25 MR. FINDLEY: Being new, I'm a little hesitant to

24

1 venture into this, but my main goal, I think, would be to
2 see that there is, you know, a wide representation of the
3 views of the public and the environmental community in
4 general, and make sure that their voices are heard.

5 CHAIRPERSON CLEMENT: Thank you. Karen?

6 MS. GAYLORD: I would say that the new
7 legislation represents a new emphasis on source control,
8 and my understanding is that in the fall we may embark on
9 an effort to try to carve out a new way of dealing with
10 groundwater plumes for the future and cleaning up soil
11 contamination at sites, and then trying to figure out
12 maybe a creative way to deal with groundwater plumes over
13 time.

14 If we do that, I think the Commission should be
15 very involved in that effort. I think it's very
16 important. It would represent a new direction, and we
17 need to be very careful about how we do that.

18 CHAIRPERSON CLEMENT: Thank you.

19 Ms. Huddleston?

20 MS. HUDDLESTON: So far I agree with what I've
21 heard.

22 CHAIRPERSON CLEMENT: Back on your lap, Mr.
23 McNeely.

24 MR. MC NEELY: And I agree with Karen also about
25 the groundwater plumes. By June 7th, 2006, they do have

1 to have the provision here for soils control. That's
2 something that's -- I mean, once the SAF Rules are in
3 place and the Soil Rules are in place, we need to take a
4 hard look at that and figure out how we're going to
5 implement it, and I think it would be good to have the
6 Commission help lead that, also, because I think it's
7 going to take a lot of outreach to cities and communities
8 to handle that.

9 CHAIRPERSON CLEMENT: It's going to be a real
10 challenge, I think, because it's a different mindset
11 entirely.

12 I think one of my goals is to continue to try to
13 be responsive to the regulated community and to make sure
14 that we're addressing those issues that you think are of
15 high priority and of importance in the program, and we
16 want to make sure that the lines of communication remain
17 open. Anybody can call me or e-mail me or, I assume, Mr.
18 Gill on technical issues and Ms. Martincic on financial
19 issues.

20 We are here to do a job, and we all take it
21 pretty seriously, so we want your input and we really
22 appreciate your participation and involvement in the
23 program. It means a lot to the Commission that we get
24 that kind of input so we know what's going on.

25 And also I want to thank DEQ for the level of

1 cooperation since my participation on this Commission. I

2 think we've seen some excellent response from DEQ and the
3 relationship I think has improved and we want to be
4 constructive by continuing to hold the role that we have
5 by statute, so thank you very much everybody.

6 Anything else in terms of objectives?

7 I will commit to having a draft report for the
8 Policy Commission members to review before the next
9 meeting in April, so you all have something that we can
10 work with now. Thank you very much.

11 Okay. Go on to No. 5, discussion of legislation
12 affecting the UST program, and that's Mr. McNeely.

13 MR. MC NEELY: At the meeting during the public
14 comments, Senate Bill 1190 was brought to our attention,
15 which we were tracking previously. But it was a DWR bill
16 that was affecting how wells are put in for an AMA, Active
17 Management Areas. Basically you weren't allowed to put
18 exempt wells in if there is a well provided in that area,
19 which could affect all remediation programs at DEQ.

20 We work with -- there is an amendment that's
21 already been approved for that bill. We worked with DWR
22 to change the language to allow remediation wells for -- I
23 will read it for you. The amendment says. The amendment
24 says -- I put myself on the spot to read it.

25 CHAIRPERSON CLEMENT: Do you want my glasses?

27

1 MR. MC NEELY: This is the exemption from that
2 provision. It says, "A remediation well drilled for the
3 purpose of remediating groundwater is exempt from this
4 section if it meets one of the following: The remediation
5 well is to improve the Department of Environmental Quality

6 or United States EPA remediation program." That's one.

7 Two is, "A registered geologist certify that the
8 remediation well is for the purpose of remediation."

9 What we're trying to do is for any EPA program or
10 any ADEQ program that's exempt from that provision, if
11 it's for another reason, like volunteers cleaning up their
12 site on their own without really no program, then a
13 geologist has to say it's certified for remediation, not
14 for production or use other than remediation.

15 The monitor well issue, initially you read it, it
16 looks like we're not monitoring wells, but going through
17 the statutes, there is no use for that water, and this is
18 really for water use, not for agricultural, so it's not an
19 exempt well according to the DEUR, so monitor wells can
20 get put in any way.

21 So, I think this handles our issue. One more
22 bill, it's not going anywhere, but I think you should be
23 aware of it, it's modifying the municipal tank program.
24 Last year we changed the municipal tank closure program to
25 include unincorporated areas of counties. Previously it

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1 was just cities and towns that were 15,000 or less.

2 This bill, House Bill 2747, which was introduced
3 last week, which would include tribal areas, but it's not
4 going to be heard today in any of the house or senate
5 committees, and I think today is the last day so it should
6 be dead maybe as of today.

7 CHAIRPERSON CLEMENT: So the only change to the
8 municipal tank program was to include tribal areas?

9 MR. MC NEELY: Right.

10 CHAIRPERSON CLEMENT: You don't have authority
11 for tribal areas; right?

12 MR. MC NEELY: That's correct. This came up in
13 some other counties. Actually, Navajo County wanted to --
14 they had tanks in the county on tribal land, so they
15 wanted to include in their application. We told them it
16 was not allowed based on the statute. They felt like it
17 should be allowed because it's still their county and
18 still their environment, and they wanted to include it.

19 So, the way it would have worked, if it went
20 through, we would pull the tanks, but EPA would have the
21 authority to tell them, to tell the EPA there is a release
22 here so they have to handle it, but we wouldn't do any
23 remediation on it, and we wouldn't give them closure. We
24 just had to sort of submit the closure documents to EPA
25 and it would be up to them to do the closure.

29

1 CHAIRPERSON CLEMENT: And that bill does not look
2 like it's going to be --

3 MR. MC NEELY: Today is the last day, unless it's
4 being put into some striker bill down the road, but I
5 doubt it.

6 CHAIRPERSON CLEMENT: What about Senate Bill
7 1190, what's the prognosis on that, do you know?

8 MR. MC NEELY: I think it's making its --
9 probably through the senate and over to the house already.
10 I'm not sure, but there was no opposition to that bill.

11 CHAIRPERSON CLEMENT: That will change things.
12 That's an interesting bill. Thank you.

13 Mr. Smith?

14 MR. SMITH: I have a question for Phil on 1190.
15 As you read it, and the amendment to allow monitor wells
16 in AMA's, there are still occasions that a pump and treat
17 might be a necessary remedy for plume control, how would
18 that -- I mean, that's a pumping well, it's truly not a
19 monitor well, I mean, if you had to pump in the AMA.

20 MR. MC NEELY: That's the provision I read. It
21 says remediation wells are exempt.

22 MR. SMITH: So, for any purpose?

23 MR. MC NEELY: For EPA program or DEA program.

24 The other thing it says, for a registered
25 geologist to certify it for remediation.

30

1 MR. SMITH: For monitoring or plume control?

2 MR. MC NEELY: Monitoring they say is not
3 included in the AMA. So monitor wells, they say it's
4 okay. Remediation wells weren't, so we put this provision
5 in.

6 MR. SMITH: Thank you.

7 MR. MC NEELY: You are welcome.

8 CHAIRPERSON CLEMENT: Okay.

9 MR. MC NEELY: That's all I have.

10 CHAIRPERSON CLEMENT: Now, the big legislation
11 placing the UST program?

12 MR. MC NEELY: Not for the UST program. We have
13 a sunset hearing in the senate today as far as Natural
14 Resources Committee. A lot of stuff going on.

15 CHAIRPERSON CLEMENT: Okay. Thank you for the
16 update. I appreciate that.

17 Now can we jump to ADEQ updates and we will start

18 with -- oh, you are back on --

19 MR. MC NEELY: I know.

20 CHAIRPERSON CLEMENT: You are back on point. UST
21 program update.

22 MS. MARTINCIC: Gail, I think I'm going to step
23 off and review all the updates when I am able to download
24 that. All right?

25 CHAIRPERSON CLEMENT: Thanks so much.

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1 MS. MARTINCIC: Thanks for letting me join by
2 phone.

3 CHAIRPERSON CLEMENT: Appreciate your
4 participation. Bye-bye.

5 MS. MARTINCIC: Bye.

6 MR. MC NEELY: For the UST program update, not a
7 whole lot new to offer. We are still working very hard on
8 hiring people, and we do have a lot of good candidates out
9 there. Most of them are from out-of-state, though.
10 In-state people, there are not a whole lot of in-state
11 people that are looking for jobs. I guess the market is
12 too good here for the consultant.

13 The database, it looks like we are going to have
14 a database. June 20th we're supposed to put it online,
15 which is really going to make our jobs a lot more
16 efficient. A lot of the reports we do by hand or in
17 spreadsheets are going to be automatic, so that will be
18 much more efficient, and we can actually report more
19 accurately than what we are doing now.

20 The SAF Rule, I will jump right into that. The
21 public comment period, informal public comment period did

22 end. We had six sets of comments, pretty much the same
23 set of comments we had previously. Even though there were
24 less comments, some of them were still pretty long, 20
25 pages rather than 22 pages. I was hoping to get that down

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1 to two or three pages.

2 We are making changes right now. We are writing
3 a preamble right now and doing an economic impact
4 statement right now. There is not going to be an
5 opportunity to review that again. It will go probably mid
6 to late March to the Secretary of State for publication.
7 It takes a few weeks to get it published, so probably
8 sometime in April there will be formal commentary.

9 I think at that time, once we submit it to the
10 Secretary of State is probably when we will make it
11 available. We don't want to submit a copy before the
12 Secretary of State gets it, and that should go through 30,
13 45-day public comment period. We will probably have a
14 couple of -- maybe a meeting in Phoenix and Tucson. I'm
15 not sure again on that, and that would probably be
16 sometime in late May time frame. So really getting to it,
17 it would be probably be already in the June time frame,
18 which pushes the rule back to late summer.

19 The cost ceilings, they are actually on my desk.
20 I've got a draft of them. Not the actual costs, but the
21 descriptions and how we are going to do it, so we will try
22 to get that -- the commitment was in March, to get that
23 out, start that process, so we are still trying to push
24 that in March time frame.

25 And then the Soil Rule is something that we are

1 working at hard. We're having stakeholder groups. One is
2 for evaluating the vapor intrusion guidance, how we're
3 going to actually implement that.

4 Another stakeholder group is technical, rewriting
5 the GPL, modify the GPL, the Groundwater Protection Level
6 guidance.

7 Then the third stakeholder group will probably
8 start in mid to late March and be actually looking at the
9 language and the policy behind the rules.

10 CHAIRPERSON CLEMENT: Great.

11 MR. MC NEELY: That's all I have.

12 CHAIRPERSON CLEMENT: Anything else for Phil?

13 Any questions or comments for Phil on his update?

14 Let me go through the DEQ updates, then I'll take
15 some public comments. I know I have got several today.

16 Let's jump down to the UST Corrective Action
17 Monthly Update, and Joe has a handout this morning on our
18 table. Did everybody receive that? It was not in the
19 e-mail that we got. Okay. Great.

20 MR. DROSENDAHL: I'm Joe Drosendahl, the manager
21 of the Corrective Action Section, and we've got the normal
22 bean counts for the major reports that we review. LUST
23 Site Characterization Reports, there is an increase in
24 SCRs that have not been approved yet. In December we had
25 13 SCRs submitted, and then in January we had 10, so there

1 is a lot more SCRs being submitted. So we need to get on

2 top of the SCRs and try to make that graph turn down
3 again.

4 Corrective Action Plans, you know, we're getting
5 on top of the big spike of Corrective Action Plans back in
6 August, so that the number of CAPs that are outstanding is
7 definitely coming down.

8 The risk assessments, for right now that's kind
9 of holding even. We did approve two this month.

10 Jeanene's been real busy with the Soil Rule and the Tier 2
11 software, but she still imagined to get two done.

12 CHAIRPERSON CLEMENT: Just a question on the
13 handout on the risk assessment. It says RA approval. I
14 don't know what that sentence means. What does that mean?

15 MR. DROSENDAHL: You mean way down at the bottom?

16 CHAIRPERSON CLEMENT: Yeah. That explanation of
17 what RA approval, risk assessment approval is.

18 MR. DROSENDAHL: Basically it's just talking
19 about the risk assessment itself. It doesn't mean that
20 the site is ready for closure, because risk assessments
21 could just create a new cleanup level that they would
22 still have to remediate to. So that's just kind of saying
23 that because a risk assessment is approved, that doesn't
24 mean that the site is ready for closure.

25 CHAIRPERSON CLEMENT: But would you have more

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1 than one risk assessment typically at a site or would it
2 be a single risk assessment per site, just because I got
3 confused with your language here?

4 DR. DROSENDAHL: Normally you would do one risk
5 assessment, but I guess it's possible for you to do one

6 risk assessment and then maybe with new information,
7 another risk assessment might be warranted. I'm not --
8 usually it's only one I would think.

9 MR. MC NEELY: I think that was some of the
10 confusion, I think some of the text got cut off. It says
11 "not a site" at the end. I think it should say "not a
12 site closure".

13 MR. DROSENDAHL: It could be, and I'll look into
14 that and see if we can change that to make it a little
15 clearer.

16 CHAIRPERSON CLEMENT: Thank you.

17 MR. DROSENDAHL: LUST case closures, you know,
18 the outstanding LUST case closures is coming down so
19 that's good.

20 CHAIRPERSON CLEMENT: Mr. Drosendahl.

21 MR. DROSENDAHL: Yes.

22 CHAIRPERSON CLEMENT: Mr. Drosendahl, this
23 statistic doesn't include the consultant that you've got
24 looking at basically old files and trying to close out
25 those ones, or does it?

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1 MR. DROSENDAHL: No. These are the sites where
2 closure was requested. We will -- I thought we had it,
3 but we will include those numbers next month.

4 CHAIRPERSON CLEMENT: I think that would be
5 helpful.

6 MR. DROSENDAHL: Yeah. We have statistics on the
7 state lead sites and also, you know, a real brief update
8 on the municipal tank closure. We removed 59 USTs in the
9 municipal tank closure program.

10 Anybody have any questions on the bean counts?

11 CHAIRPERSON CLEMENT: Any other questions,
12 comments? Thank you.

13 MR. DROSENDAHL: The next -- I think the next
14 topic with the risk assessment, the Tier 2 software
15 update, the software is being tested by a variety of
16 internal and external people. The comments are due at the
17 end of the month.

18 From some of the initial comments that have been
19 submitted, it does appear that some changes to the
20 programming will occur. We're not really sure how much
21 right now. We haven't received all the comments, so,
22 hopefully by the next Policy Commission, I will report on
23 the outcome of the beta testing.

24 CHAIRPERSON CLEMENT: So the implementation of
25 this software package is still out into the distant

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1 horizon until you get your arms around the programming?

2 MR. DROSENDAHL: Yeah. It's a little hard to
3 tell exactly -- we haven't got all the comments, so maybe
4 the comments we haven't received would offset the comments
5 we did that indicated a change might be necessary, so I
6 can't really say how long this is going to extend before
7 we get the software out to the public, but we will try to
8 push it as quick as possible.

9 CHAIRPERSON CLEMENT: And I know I've asked this
10 several times. I will ask it again. Do you have the
11 contract resources you need or not?

12 MR. DROSENDAHL: In regards to?

13 CHAIRPERSON CLEMENT: The risk assessment

14 software package. You have contract resources?
15 MR. DROSENDAHL: Yes.
16 CHAIRPERSON CLEMENT: Are they sufficient?
17 MR. DROSENDAHL: As far as I know, yes.
18 CHAIRPERSON CLEMENT: Because I know you only
19 have one staff person to do everything, and in my opinion
20 that may not be sufficient, but if you have contract
21 resources, at least you have some support.
22 MR. DROSENDAHL: Oh, all the programming that
23 might be needed would be done by the contractor.
24 CHAIRPERSON CLEMENT: And the other thing that
25 came up in the presentation last week -- or last month was

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1 Ms. Hanley mentioned that she had yet to write the
2 document, the explanatory document, the guidance document
3 that will go with the software, and it's just a
4 suggestion. Obviously you are going to manage your
5 program, but that could be something maybe your contractor
6 could support also so she doesn't have to do everything so
7 much hands-on.
8 MR. DROSENDAHL: Right. The contractor is
9 writing the guidance document on how to use the software.
10 What Jeanene was going to write was a real brief, you know
11 -- it's not very lengthy on just the -- how Tier 2s should
12 be used, so, it's not an expensive document, you know,
13 page or two.
14 CHAIRPERSON CLEMENT: Great. Thank you. That's
15 a lot clearer.
16 Any questions or comments on the risk assessment?
17 Thank you.

18 Okay. Ms. Navarrete, Judy Navarrete, the SAF
19 Monthly Update, please.

20 MS. NAVARRETE: Yes. I think everybody got the
21 major months in their packets, and we have been extremely
22 busy in the State Assurance Fund section. We're down on
23 hydros. Like Mr. McNeely said, we are hiring. We've got
24 four offers out there hoping that they will take the
25 offers, and so we can get some more hydros into the

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1 program.

2 Right now, we have -- as you can see from the
3 charts, we have 361 in our inventory that we need to make
4 interim determinations on.

5 And during the month, Mr. O'Hara was doing some
6 counting, and he discovered that there is a discrepancy
7 between the applications that we have received and the
8 applications that I say that we've had interim
9 determinations on and then the total that are in process.

10 And the discrepancy lies in that we do return
11 some applications. If the release has been closed over a
12 year and they submit an application, it's not eligible.
13 If it's an ineligible applicant, we return the
14 application. So those are not in my count because those
15 are final determinations. They're not interim
16 determinations, so I'm off a little bit there.

17 When we get our new database online come July,
18 reporting can be much more distinct, and I built the time
19 frames into the database, so every time that we have a
20 time limit, our 90 days, our 30 days for AN answers,
21 everything like that, a new clock will start every time we

22 go into a new phase of an application.

23 So it's going to be -- just everything is going
24 to be phased. I mean, I will be able to tell you where
25 everything is at. But, anyway, I did want to bring up

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1 that little discrepancy that Mike found and explain it.

2 And we do have lots of applications. We are kind
3 of holding, we are trying to get everything out. We don't
4 want anything to go over 90 days. Unfortunately some of
5 them have.

6 I'm not sure if all of them have actually gone
7 over the 90 days or some of them have been in AN, and, you
8 know, we don't have a way to toll the clock right now, so
9 when we get that, then I can report on that a little more
10 distinctly.

11 And if you -- does anybody have any questions on
12 applications?

13 CHAIRPERSON CLEMENT: What it sounds like to me
14 is the applications pending is more than 365, and I
15 didn't --

16 MR. MC NEELY: Zero.

17 CHAIRPERSON CLEMENT: Zero.

18 MS. NAVARRETE: Give me a heart attack.

19 CHAIRPERSON CLEMENT: I need a new pair of
20 glasses. I'm looking at your old data. You did a great
21 job.

22 Mr. O'Hara?

23 MR. O'HARA: Madam Chair, I'd like to follow up
24 on what Judy and I discussed. What I'd like to do is go
25 back to the chart that was in July, and it showed that at

1 the end of July we had 124 active applications, and then
2 if you add in this chart the yellow lines, which are the
3 applications received in the last six months, subtract out
4 the interim terminations, what you are left with is about
5 492 active applications.

6 And what Judy has explained, there is a third
7 piece of that, which are applications returned that do not
8 show up on our chart. And just a follow-up question, you
9 can do it next month, if you could find out, I'd really
10 appreciate it. That would leave 131 returned
11 applications, which is statistically significant, given we
12 have 731 less six months, so that's almost -- do the math
13 -- 20 percent or something return. I want to know why.

14 MS. NAVARRETE: I didn't agree with your numbers,
15 so I came -- you know, I did my own, so if you want me to
16 do my own, I will do it in a report next month.

17 MR. O'HARA: Okay.

18 MS. NAVARRETE: But I came up with 66 as a
19 discrepancy, you know, from interim determinations and
20 what's come in, what's coming out.

21 MR. O'HARA: Whatever those returns are, if there
22 is a reason you are seeing, a common thread that all these
23 are submitted because they're over a year, is there some
24 kind of education we can put out to the public as to why?

25 MS. NAVARRETE: I can tell you the great majority

1 of them were work that was over two or three years old,
2 and no one had submitted an application on it, and we got
3 over a hundred of them at one time, within a couple of
4 months, and a lot of the releases had been closed in the
5 meantime, and so somebody was carrying those costs.

6 MR. O'HARA: So it got returned. Okay. Thank
7 you.

8 CHAIRPERSON CLEMENT: Mr. McNeely?

9 MR. MC NEELY: If you look at these numbers, you
10 could be alarmed by, we have 320 pending under 90. If you
11 look at the numbers, 135 in November, 176, that's
12 significant. Historically we process about 60 to 70 a
13 month, and that's throughout the program, I think since I
14 was there in '99, about 60 a month.

15 But just to make you guys feel more comfortable,
16 we're not going to generate a huge backlog. Judy's group
17 has been down to really one hydro doing reviews, so we've
18 been pinching in to help, so she's been short-staffed, but
19 in the meantime, we've written the SAF Rules during this
20 time, and actually we've done the cost ceiling schedules,
21 which we are going to share in March, and we've been
22 reviewing our databases, which is taking a lot of time to
23 do the database, so in terms of productivity, they managed
24 to maintain pretty much the review that we've had in the
25 past, using some of Joe's staff, and streamline the

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1 process, and in the meantime really doing program
2 development that hasn't been done in a long, long time.

3 So, I think once we get these people on board and
4 trained, and then in June when the cost ceiling and

5 database is all up and running, I think we're going to be
6 very, very efficient and you will see these numbers drop.
7 So, I'm watching -- that's one thing we don't want to
8 generate is another backlog for that, but I think it's
9 going to go, and hopefully the 108 in the middle of this
10 month will go down, too.

11 CHAIRPERSON CLEMENT: Thank you.

12 MS. NAVARRETE: And then the next thing in my
13 report are the appeals, and if anyone has any questions,
14 we didn't have anything that actually went to hearing last
15 month.

16 CHAIRPERSON CLEMENT: The formal appeals in
17 January, are they settled or are they still there, the six
18 that you've got? I'm not following the chart, I guess.

19 MS. NAVARRETE: The six that were referred to
20 OAH?

21 CHAIRPERSON CLEMENT: Yes.

22 MS. NAVARRETE: Now, that is six that we referred
23 to OAH in January, and we had zero go formal. Okay.

24 CHAIRPERSON CLEMENT: Okay.

25 MS. NAVARRETE: But, one of those could be

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1 carried over, it could have been delayed or forwarded
2 because of numbers of reasons. So, it's not that those
3 six have gone completely away, one of them may show up
4 that we go to hearing on in February.

5 CHAIRPERSON CLEMENT: So, the top number is the
6 actual number that month of cases you refer to OAH; right?

7 MS. NAVARRETE: Formal appeals that were filed,
8 and then in between going to filing a formal appeal and

9 going to OAH, we have informal settlement conferences.
10 So, the difference is, we settled all of those before they
11 are referred to OAH, and six have been referred to OAH of
12 those 17, and that we couldn't get settled in an informal
13 settlement conference, and that doesn't mean that we won't
14 settle before we actually go to hearing.

15 CHAIRPERSON CLEMENT: Any other questions on
16 that?

17 That's it? Thank you very much, Judy.

18 I'm going to take some public comments at this
19 point because I know there are a number of people here
20 that wanted to speak.

21 The first comment card I have is from Mr. Brian
22 Beck, and you are on, Brian, if you wouldn't mind stepping
23 up a little bit so we can hear you.

24 MR. BECK: Madam chairman, I have three issues.
25 The very first one is, we're seeing the last 90 days an

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1 awful lot of determination preapproval documents, this
2 type of thing, being issued with wrong RPs or being mailed
3 to the wrong consultants. Like I have a couple of
4 examples here in my hand if people want to see that type
5 of thing.

6 In fact, on the preapproval that we just received
7 last week that we called on ADC, we were told we had to
8 file an appeal to get the determination changed, because
9 once a determination is issued and you have wrong
10 information, you have to file an appeal on something that
11 the RP was extremely pissed off about.

12 Second thing that affects all regulated public is

13 what ADEQ is currently doing with the new preapproval
14 process. Basically they're attaching what's called an
15 attachment 3, which is an SAF tracking sheet to the
16 preapprovals. Basically it's a spreadsheet that the
17 agency has corrected from the OMC on the approval that
18 we're now being required to fill out and attach to the SAF
19 applications.

20 When inquiring about this, we were told that the
21 SAF will not pay for the preparation of these
22 documentations because they considered it to be part of
23 the SAF application.

24 The second thing on this, since this is going to
25 go through on all preapprovals now, do you consider this

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1 to be a policy change, I mean a major change to the
2 preapproval? It's in strict violation of 10 -- of
3 49-1014, when something like this comes up that the
4 regulated public is supposed to be notified 30 days prior,
5 or the regulated person is supposed to be notified 30 days
6 prior to the implementation. No one has seen this
7 information or anything else.

8 Also, on this particular spreadsheet that they're
9 doing, the spreadsheet that they have here, they will take
10 individual line items from the form Cs and have completely
11 jumbled it up. It's not even consistent with the form C
12 or the approval, so it's a hunt-and-peck situation to go
13 back to these supplemental worksheets and make sure that
14 they are right.

15 The other thing, too, ADEQ says they will only
16 accept their form and their format the way it's put

17 together, and they will not accept a computerwide
18 spreadsheet done in a standard accounting function to show
19 what's going on.

20 So, we're seeing more work being inputted on
21 these preapprovals as a requirement of the preapproval.
22 It's basically a major change in the preapproval process.
23 It's a major change to the SAF applications. If people
24 want to see this, I have examples here.

25 I will hand one out to you. The first page is

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1 the approved form C, page 1, you can see it's all jumbled
2 up.

3 CHAIRPERSON CLEMENT: I will make sure you make
4 copies for the Commission. Oh, you have.

5 MR. BECK: The third item, we went back to -- a
6 number of consultants got together and looked at
7 applications that were filed back in October and November
8 of '04, basically 4th quarter. Of the ones we looked at,
9 there was 124 applications. 41 of these applications were
10 returned in 46 days after they were filed, and the only
11 thing that we found wrong with them, including looking at
12 the closure date on these things, was the wrong EIN number
13 that was put on the application notice. That appears to
14 be the only reason why they were returned and the only
15 explanation we've received so far from the agency.

16 Of the 83 remaining, one received a determination
17 in 79 days that was not -- did not have to be appealed.

18 Of the 82 remaining, within 61 days, 82 have
19 received AN letters. 80 of these, after the ANs had been
20 answered, had received determinations within 96 days of

21 them being filed. All 80 of these have had informal
22 appeals filed.

23 Even though we had answered the ANs in the 61 day
24 -- or the initial circumstance, the determinations came
25 back basically with the exact same deficiencies as on the

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1 AN that had been previously answered in the information
2 sent to them. We saw absolutely no response or action on
3 the part of the agency in addressing the information that
4 had been provided on the ANs.

5 Two of the applications of the remaining had
6 90-day appeals filed on them because they have not been
7 processed. The biggest thing we're getting back on the
8 ANs being issued is, simply stated, that we do not
9 understand. These are statements being made by the
10 individuals in the SAF, which shows a lack of experience,
11 pure and simple. Any questions?

12 MR. MC NEELY: If you could provide a list, you
13 can provide them to me anytime, you know, and I will
14 investigate all those issues.

15 MR. BECK: Why don't we address that particular
16 thing. Seven times you asked that last year, and we
17 responded seven times. We have not received any response
18 back from you on those particular seven issues in 2004.

19 MR. MC NEELY: You are talking to me personally?

20 MR. BECK: That's correct.

21 MR. MC NEELY: Show me the letter.

22 MR. BECK: We will regenerate everything.

23 MR. MC NEELY: Okay.

24 CHAIRPERSON CLEMENT: Any other questions,

25 comments on that?

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1 Next public comment is from Mr. Leon Vannais
2 regarding the new database.

3 MR. VANNAIS: Leon Vannais for the record.

4 Looking forward to the new data bases coming out.
5 I understand that we had had \$500,000 to the production of
6 this database, and you may or may not know, I'm a gluten
7 for public information. I fought pretty hard. We spent a
8 lot of money in attorneys' fees to get SAF database
9 information about two years ago, about \$7,000 to get that
10 public information. And I'm hoping that the department
11 will consider some way to access this information to the
12 public, either on a web site or in a published list, as we
13 can get from UST track, although it's a limited fashion.

14 It's important to us because it can show us
15 trends and changes of practice over time that we would not
16 otherwise be aware of. And this also goes, unfortunately
17 for the UST track, I don't know how much money the state
18 has spent at this point, I'm sure it's \$1.5 million, but
19 there is a ton of information on UST tracks to anybody
20 that does business that we just don't have access to.

21 The UST track that is published and shown on the
22 Internet is extremely limited, only concerns itself with
23 only 5 percent of the information that UST track actually
24 holds. And I would like to see the Policy Commission
25 recommend to the DEQ to improve their public access to

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1 public documents, both on the SAF side and on the UST
2 Corrective Action side.

3 CHAIRPERSON CLEMENT: Thank you, Mr. Vannais.
4 Just as a follow-up question, because obviously we can't
5 really take this issue on at this juncture, what is your
6 plan of public access to either of those databases?

7 MS. NAVARRETE: Public access as far as SAF is
8 concerned, I would like to have the -- like we had for
9 licensing time frames, where you can go in and query on
10 the number; however, that might be placed to, because
11 getting this whole program databased up for \$500,000,
12 we're really pinched, and we're going to get all the basic
13 things that we need in this database, and all of the
14 things that come afterwards, you know, we have to come up
15 with the money to do that, and hopefully so, because I
16 would like for people to be able to query on their
17 application number or on their LUST number and be able to
18 see where your application is at in the process, because
19 that would save us a lot of communication. You know, you
20 wouldn't have to call in and say, on my technical review
21 where am I at in the process. It would be there, because
22 like in licensing time frames, the last event pulls up,
23 and so you know where that application is.

24 And that's one thing I would love. I've always
25 been an advocate of licensing time frames. I love it

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1 because everybody is right there and everything is right
2 there for everyone to see, and that would be probably one
3 of the first things I will ask for is public access to our
4 applications, if that can be done, because it has to be

5 done with programming from AZ right to the web.

6 CHAIRPERSON CLEMENT: Okay. Any plans in terms
7 of the UST Corrective Action's database public access?

8 MR. MC NEELY: Mr. Kern.

9 MR. KERN: Ron Kern, DEQ. Basically to kind of
10 take the other part of the program, you talked about SAF,
11 as regards UST and LUST type information, and that's what
12 Leon is referring to, we have every intent, given the
13 capability, to get most of that information up on the web
14 because pretty much we foresee or recognize that it's 99
15 plus percent public information.

16 And what we do have to get right now, we're
17 developing an oracle application, which is our new
18 database, and it's a joint UST/LUST and SAF database.

19 Basically we were developing it in the new 10G
20 environment and then the plug got pulled on us and we had
21 to move back to a 6-I environment, which is all technical,
22 but, basically, yeah, we are working with our IT group and
23 with our Director's office to get as much of that into a
24 state that can be moved up to the Internet. It will be a
25 slow process because we can't go faster than our IT

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1 section is going.

2 CHAIRPERSON CLEMENT: Thank you.

3 Mr. McNeely?

4 MR. MC NEELY: And the database does not include
5 -- I'm not sure, Leon, are you talking about technical
6 information? But we're not going to have technical data
7 on there, concentrations this early or groundwater or
8 monitoring well information. It's more of an

9 administrative process, reports in and out status
10 database.

11 MR. VANNAIS: Yeah, Leon Vannais. That's
12 primarily what we're looking at, who's been submitting
13 these reports, is there a site next door that's submitted
14 it within the last four months so that I can go access
15 that information and incorporate that into mine. All
16 those things will be extremely useful.

17 CHAIRPERSON CLEMENT: Mr. Kern?

18 MR. KERN: Ron Kern again.

19 And the other thing that we are doing, we are
20 also looking at getting DIS on the web, which would kind
21 of address some of what Leon is looking for as far as the
22 sites within a certain area and the like, so we will be
23 looking; and, again, as Phil has said, there won't be
24 specific analytical data or anything like that. It will
25 be pretty much milestone, location type information, who

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1 owns what, the data that we have in the database.

2 CHAIRPERSON CLEMENT: All right. Ms. Navarrete?

3 MS. NAVARRETE: It will help if you get the DIS
4 up there, because it would be by LUST numbers, the numbers
5 around it, at least that would give you a pinpoint of
6 where to go look.

7 MR. VANNAIS: We actually have the capability now
8 to search for EDR, which is Phase 1. They do that
9 automatically, but we're looking for report entries also
10 to see what information is being held.

11 MS. NAVARRETE: You want the detailed --

12 MR. VANNAIS: Not the concentration, but I just

13 need periodic sites, corrective action, that kind of
14 information.

15 CHAIRPERSON CLEMENT: I think we could probably
16 have that detailed discussion maybe offline, but thank you
17 very much. It seems like from the response we've gotten
18 from DEQ that they're headed in the direction of more
19 public information. We can take this up as an agenda item
20 and see and track the progress on this. I think it will
21 be helpful. That's a good point.

22 Any other public comments regarding any of these
23 issues? There was quite a bit of interest in it.

24 No other public comments? We will move on.
25 We've had the financial.

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1 Do people want a break or do they want to push
2 through? I don't care.

3 MR. SMITH: Push through.

4 CHAIRPERSON CLEMENT: You're up. We've had the
5 financial study update from Andrea Martincic, and now we
6 will go to the technical subcommittee update with Hal
7 Gill.

8 MR. GILL: We had a meeting two weeks ago today,
9 and the general issue of the meeting was whether or not
10 DEURs, a Declaration of Environment Use Restriction, could
11 be filed for a groundwater site. And that was what
12 started the meeting, and it's a really complicated issue.
13 It goes in all different kinds of directions, and so I
14 apologize for -- I will probably go in all those
15 directions as well in trying to describe it. But,
16 basically, I think the first thing that was addressed,

17 and, Karen Gaylord, you can jump in if I misquote what you
18 were saying, is that Karen being involved in developing,
19 writing the DEUR legislation, that it was never the intent
20 of the DEUR to -- well, the DEUR was not supposed to be
21 put on groundwater to -- what was the word you used -- to
22 restrict the aquifer use, because basically the aquifer,
23 we have no control over how it's being used, and so the
24 DEUR was not designed to restrict aquifer use; however, in
25 our discussion we found that, depending on your site, and

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1 it's really based on your property. If you have a very
2 large property and your plume is entirely on your
3 property, you could file a DEUR on the groundwater because
4 you have control over access to that groundwater.

5 Now, you also have to look and make sure that you
6 do not have a production well or an irrigation well nearby
7 that could potentially pull it off your property. So,
8 it's a difficult process in any case. But where the
9 issues were really evolved was for USTs, that in most
10 cases, the plume already goes off the property, so to file
11 a DEUR on a groundwater site, you would have to bring in
12 all the property owners above the plume and within a
13 quarter mile of the plume, which creates what everybody
14 was agreeing would be very difficult, if not impossible,
15 to get all these property owners to sign off on the DEUR.

16 So that's basically where the discussion started.
17 Then we moved into where and what brought this issue out
18 to begin with, if we are doing risk assessments, if we
19 have a site that is a soil and groundwater site and we're
20 going to do a risk assessment to establish Tier 2 numbers

21 for a soil cleanup, if the plume goes off your property,
22 are we wasting our time because we are going to have to
23 reuse the groundwater anyway.
24 And I think -- and, again, Phil, or whoever, jump
25 in if you remember something else that I'm forgetting.

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1 Basically the Tier 2s would be primarily done to establish
2 the Tier 2 cleanup levels for the soils, and -- but the
3 main issues you want to make sure -- 'cause you want to
4 make sure you clean up your soils because then whatever
5 contamination is left in the groundwater, if it's
6 something that doesn't have to be remediated because it's
7 an issue with a health hazard or something like that in an
8 adjacent property or something, it can be left to monitor
9 that situation.

10 Now, the site -- DEQ stated, and this is
11 something that we are going to be working on in the new
12 SAF when that comes up, is that you could provide no
13 further action letter for the property, but that doesn't
14 close the site. It closes -- there is no further action
15 on the property, but you have a contaminated plume that
16 you are monitoring for to see when it goes below the AWQS,
17 and until that's done, the site is not closed, but you
18 would be able to -- if the source is gone, you would be
19 able to get an NFA letter on your property.

20 There are many, many issues on this, and I think
21 one thing that we did decide to do, the DEQ, is to look
22 into putting a fact sheet together for DEURs, and because
23 it's still -- it's still very confusing as to whether or
24 not you're required to do a risk assessment, DEQ looked at

25 the language again and agreed that there was some -- in

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1 the statute there was some confusing language, but they
2 believe that it does not mean that you are required to do
3 a Tier 2 on every soil site, so they're going to put forth
4 language that stipulates and explains that section and
5 stipulate that you are not required to; however, you must
6 understand that's the corrective action side of the
7 program. The State Assurance Fund side of the program,
8 you are required to look at most cost effective, and so
9 you may indeed want to look at doing a risk assessment
10 because you have to prove that the alternative you are
11 selecting for remediation of your site is the most cost
12 effective, so you may indeed have to do a risk assessment
13 to show that what you are choosing is the most cost
14 effective.

15 Another thing is, Mr. McNeely is going to give us
16 an update and progress on DWR on establishing a similar
17 database that they have for WQARF sites that notifies when
18 a well is being permitted to be installed on WQARF site.
19 They're working on the same thing for UST sites, and Mr.
20 McNeely is going to keep us apprised of where that is
21 going, because that would be very helpful, because right
22 now we have no control when someone puts a well in
23 anywhere, but at this point we do not know whether or not
24 they are putting in a UST plume.

25 So, we decided that even though you can tell

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1 there is lots of issues, we decided not to continue
2 discussing this issue in the subcommittee. We're going to
3 put out -- we're just going to work on the fact sheet for
4 the DEURs to try to make that clearer than mud -- I like
5 my explanation -- and move forward that way. There was
6 lots of other issues, but trying to capsule them all is
7 impossible.

8 Any questions?

9 CHAIRPERSON CLEMENT: Any other comments from
10 participants at the subcommittee meeting? Mr. McNeely?

11 MR. MC NEELY: One thing we talked about is
12 pushing this back probably until the fall, because the
13 Soil Rule is going to take some time, the SAF Rule, and I
14 personally do not have time to push this forward right
15 now, but I think in the fall we are going to be probably
16 talking to DWR and try to handle this issue from there.

17 MR. GILL: I also wanted to ask you, Phil, what
18 is the status of -- you had mentioned earlier with the new
19 statute changes, are you going to have to be looking at
20 another rule to address those, or are you looking at what
21 you mentioned earlier, just that you are -- how are you
22 going to be addressing those new statute issues?

23 MR. MC NEELY: I think Senate Bill 1706 applies
24 and we're going to write a rule to implement the M and A
25 and NFA.

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1 MR. GILL: When do you think that would start?

2 MR. MC NEELY: That's the fall. Once we get -- I
3 think we're trying to get the Soil Rules submitted

4 probably in August, trying to get that rule complete by
5 August, so that should free us up to tackle another one.
6 This rule should be not as voluminous. It would be
7 smaller. But in terms of actually implementing it, it has
8 sort of significant terms of the program.

9 CHAIRPERSON CLEMENT: It's a huge program change.

10 MR. GILL: And I just remembered another issue
11 that was brought up with notification, and that was
12 something again in the fall we will look at. If indeed
13 you have outside contamination, there is a -- if you want
14 to try to implement a DEUR, there is this notification,
15 but right now the way it's set up, it's just a form that's
16 submitted to DEQ that says I am notified. We agreed that
17 that needs to be taken further, there needs to be
18 something done to -- well, first off, if you actually were
19 to find -- let's say you had one or two property owners,
20 they would indeed sign it. Right now there is nothing to
21 sign. There is nothing set up for that process. So we
22 were going to look at that process, but we agreed that
23 notification is an important issue, because on many of
24 these sites a CAP is not required or has not been required
25 by DEQ, and so there has not been a notification process

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1 for these people if a risk assessment is done. Thank you.

2 CHAIRPERSON CLEMENT: Mr. McNeely?

3 MR. MC NEELY: When I say we are going to work
4 into the fall, it's not that the program is on hold until
5 the fall, we are pushing on source cleanup, so everyone
6 out there is still pushing to clean up the source. That's
7 the first step in the process anyway is to get the source

8 cleaned up. That's when the NFA comes in to monitor, so
9 cleanup sources, you only have five years to go before the
10 SAF fund is pretty much over.

11 CHAIRPERSON CLEMENT: I have a question, and just
12 conceptually on your off-site plume and property notice
13 and property owner buyoff, on EPA in CERCLA made a policy
14 decision in Arizona at some point in time where off-site
15 groundwater contamination did not decline the CERCLA site,
16 and they did not perceive that the boundaries of the
17 CERCLA automatically went where the contamination was.
18 This was some time ago regarding real estate issues.

19 So, is DEQ saying that if you have an off-site
20 plume, regardless of the concentration and the depth to
21 groundwater and any potential risks to the public, that if
22 that plume is under a property owner, they have to be
23 noticed and they would also sign off on the DEUR. Are you
24 that far?

25 MR. MC NEELY: Joe might answer.

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1 MR. DROSENDAHL: If a DEUR is used to close a
2 groundwater site or a groundwater contamination, if the
3 plume travels off the property from which it emanated,
4 each property owner that the plume is above has to sign
5 the DEUR, so it's the off-site property owners that would
6 sign the DEUR in case closure was needed before the plume
7 was below the water.

8 CHAIRPERSON CLEMENT: Ms. Gaylord.

9 MS. GAYLORD: Well, I think that in Arizona a
10 groundwater aquifer is a common resource, and the water
11 right that you have to an aquifer is not the same as

12 surface water rights. Surface water rights is a property
13 right. Your right to use an aquifer is a use right.

14 And under state law we cannot place a DEUR or use
15 restriction on the aquifer, so what we can do is restrict
16 the land use. And so we can say to a property owner -- or
17 a property owner can say, him or herself, I'm not going to
18 drill a well on this property, I'm going to file a deed
19 restriction saying that no well can be built on this
20 property until the property meets the surface water
21 drinking water standards, or surface water quality
22 standards, or some other set of appropriate standard.

23 Now, today, if a property owner wants to clean up
24 soil contamination and clean up the source, but wants to
25 try to convince DEQ that they shouldn't have to do more

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1 than monitor the natural attenuation of the rest of the
2 plume, which is off their property, then they could engage
3 in a private transaction. They could perhaps offer to pay
4 adjacent property owners to put restrictions on their
5 property, but those adjacent property owners certainly
6 aren't required to do that, and they would have no reason
7 to do that unless the UST owner, the person trying to
8 close that site wanted to pay them or convince them in
9 some other way that they should put a restriction on their
10 property. But no person can put a deed restriction on
11 someone else's property, so it would have to be a
12 market transaction and you would have to convince all of
13 the property owners overlying the plume and overlying
14 perhaps the path of the plume that they wanted to put a
15 restriction on their land. And that's why I think the

16 discussion in the subcommittee led to the conclusion that
17 that wouldn't happen very often.

18 But the notice issue Hal is mentioning is
19 important. To the extent you want to adopt natural
20 attenuation remedies for groundwater plumes that do travel
21 off-site, you want to make sure that people in the area
22 know about the contamination and don't access the water
23 and don't drink water that's not safe.

24 I guess the one last point I would make is the
25 fall effort. I think it's very important and I think

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1 water providers are going to be very concerned if we do
2 adopt natural attenuation strategies. I do think people
3 have the right to drill wells and use the water off-site,
4 and people have the right to access the water through
5 production wells to serve their customers have to
6 understand the process and be involved.

7 CHAIRPERSON CLEMENT: Very important.

8 MR. GILL: Another component that Phil actually
9 brought up in the meeting, too, that we had identified is
10 that one area that you have no control over at all is the
11 larger production wells, irrigation wells being installed
12 near your plume that could start pulling that plume, which
13 you have no control over, and that, I have no idea how to
14 address that. Because the one component of your risk
15 assessment, and from natural attenuation, is that you have
16 to show that your plume is stable. The source is removed
17 and the plume is going to start degrading and it's not
18 going to keep moving, but a large well put in the aquifer
19 outside of the plume can actually indeed move it, so,

20 that's a problem.

21 MS. GAYLORD: I guess one more point. EPA's
22 strategy for off-site contamination really was designed to
23 relieve adjacent property owners' liability, but they
24 still do, obviously, track the contamination, make sure
25 that people aren't accessing water that's unsafe.

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1 I think probably the UST program is taking
2 exactly the same approach. We don't try to hold adjacent
3 property owners liable for cleaning up contamination that
4 migrated under their property, but we do want to make sure
5 they know if there is contamination traveling towards them
6 or contamination under their property.

7 CHAIRPERSON CLEMENT: I agree. Thank you, Ms.
8 Gaylord.

9 Any other comments or questions?

10 MR. MC NEELY: No.

11 CHAIRPERSON CLEMENT: Okay. Summary of meeting
12 action items. I have a few, and please add.

13 MR. GILL: There is a bullet under mine. I
14 thought it was another item.

15 CHAIRPERSON CLEMENT: I got to put the glasses
16 back on.

17 MR. GILL: I guess I'm not done.

18 CHAIRPERSON CLEMENT: No.

19 MR. GILL: I wanted to bring up this issue to the
20 Policy Commission to see if they agree that it should be
21 moved forward as an item for discussion in the technical
22 subcommittee. With the new Soil Rule coming out, there is
23 some addition -- changes to the definition of soil, and

24 questions were raised in the Soil Rule meeting that we had
25 just a few weeks ago, and basically includes moisture and

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1 vapor pressure, soil, pores in the definition of soil, and
2 the question of what moisture meant brought up the issue
3 of capillary fringe and free product.

4 And the issue that was discussed in the meeting,
5 and my question is when is the moisture or the capillary
6 fringe part of the soil or is it part of the water. And
7 DEQ agreed that is was an issue that they had not
8 addressed fully yet, and it's extremely important when
9 we're looking at removing the source.

10 And so I wanted to bring that issue forward and
11 see if the Commission thought it was something that was
12 important enough to be moved forward to a subcommittee
13 meeting for discussion.

14 CHAIRPERSON CLEMENT: Mr. McNeely?

15 MR. MC NEELY: I would propose that once the rule
16 becomes public, probably sometime in the mid to late
17 March, we should look at the entire rule in the technical
18 subcommittee.

19 The issue here, I think we probably need to get
20 all the technical people, dropping the water table,
21 capillary fringe, what's water, what's not water, what's
22 soil, what's not soil, just to -- because we've been
23 addressing this since I've been in, I think it's been
24 around for a long time. I don't think we set out a clear
25 guidance on what we consider. It might be type specific.

1 So these type of issues we can talk about, not probably as
2 UST only, but probably as an agency, because it affects
3 other programs.

4 CHAIRPERSON CLEMENT: It's like an agency wide
5 issue. Would you be comfortable holding that off until we
6 see this new rule?

7 MR. GILL: Probably. I guess the problem that
8 I'm having is that -- is because we're -- the owner
9 operators' required remediate the source. That's raising
10 some concerns in Corrective Action Plans and work plans as
11 to what is identified as a source. And so they're getting
12 denials or requiring additional work being done, both,
13 based on the capillary fringe or whatever.

14 And, remember, we wrote some language in the
15 guidance document that brought into account the
16 fluctuating water table, and I'm not -- personally, you
17 know, I can address it anytime. I don't know if it's a
18 big enough issue with everybody to -- because of the
19 source issue and moving forward with corrective action,
20 you know, to move it ahead for discussion.

21 I mean, granted, it's something that needs to be
22 discussed across the board, but because source is written
23 into the UST guidance, and for cleanup, and it's more of
24 an important issue with you is the right now.

25 CHAIRPERSON CLEMENT: Mr. McNeely?

1 MR. MC NEELY: Hal, what you are articulating
2 right now is not necessarily identifying what soil is. To
3 me, the source, I think we've already gone through what we

4 consider source, but when you guys propose a mediation for
5 source, I'm hoping soil, capillary fringe, smear zone,
6 because when you are done, in my mind what we're leaving
7 is, if you have free product or smear zones, then your
8 natural attenuation is not going to work.

9 So, hopefully, we are internally saying that, and
10 hopefully you guys are cleaning up source areas, not just
11 soil source areas. I thought that's what we had talked
12 about.

13 MR. GILL: That's what I understood, too. That's
14 what I had heard.

15 CHAIRPERSON CLEMENT: Perhaps we could just -- I
16 don't think I participated in those discussions and I
17 thought we were pretty clear at the end of it, that source
18 was source regardless of where it resided in the system.
19 And you had to address it that way, so is there still, you
20 know, between the DEQ and the regulated community,
21 problems on that issue?

22 MR. GILL: Well, I've had some issues reported to
23 me referring to it, and because I -- the reason I tied it
24 to the soil is it was basically addressing the capillary
25 fringe, and I agree with what you just said, Phil, is to

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1 me, the source is all three. And that's why I was a
2 little confused on some of the reports as to why it was
3 being separated.

4 But, yeah, I have no problem waiting, you know,
5 to discuss it in a larger group as far as the soil
6 definition.

7 CHAIRPERSON CLEMENT: Okay. Any other things

8 that I -- anything else under the technical subcommittee
9 update?

10 I do have a public comment, and if no one minds,
11 I would like to take it now because it's right on topic.

12 Mr. Leon Vannais.

13 MR. VANNAIS: Leon Vannais for the record.

14 Unfortunately, I think the source issue is
15 problematic and it needs to be addressed now, because 1306
16 went into effect, and 1306 talks about CAPs submitted
17 after the effective date of this piece of legislation,
18 1306. You have to consider what the source is. So, right
19 now we're working on these corrective action plans that
20 are dealing with the source issue. And I think we have a
21 consensus that, yes, regardless of whether it's a smear
22 zone, capillary fringe, if it constitutes a source, then
23 it's got to be cleaned up.

24 What we're having a problem with is what is the
25 applicable standard for analyticals collected in those

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1 smear zones or capillary fringes. Is it SRL's or GPL's.

2 We've been getting responses that say no, it's
3 not really a soil issue, it's more of a groundwater issue,
4 deal with it later. But you look at the analysis and you
5 can tell from a professional standpoint that whatever
6 concentrations, and however you say it, it's a smear zone,
7 capillary fringe, it's going to continue to be a
8 contributing source to groundwater.

9 And that's our problem, because at this point
10 we're trying to get CAPs approved that deal with removal
11 of the entire source so we can get that NFA or remediation

12 letter at the end of that CAP, and we're uncertain at this
13 point that if we don't clean up these smear zones,
14 capillary fringes, that it will get the job done at the
15 end of the day.

16 So, I think we do need to have continuing
17 conversations on that specific issue, what is the
18 applicable standard, is it soil; if not, how do we define
19 what needs to be cleaned up.

20 CHAIRPERSON CLEMENT: Thank you, Mr. Vannais.

21 Mr. Drosendahl, did have you a comment at this
22 point?

23 MR. DROSENDAHL: No.

24 CHAIRPERSON CLEMENT: Did that give you any clear
25 guidance?

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1 MR. GILL: Well, I guess the question is, I agree
2 with Phil, I thought it was pretty clear from the statute
3 what source was. But I guess what Mr. Vannais is saying,
4 is -- and I don't know if I completely understood the
5 issue, but it sounds like that it isn't clear.

6 MR. VANNAIS: I can give you one more example if
7 you don't mind. Source is defined in 1306 as contaminate
8 concentrations. I think the language is that we will
9 continue above active remediation in groundwater, so we've
10 got no idea of how to handle that. I mean, is it 500
11 parts per billion? What is the source in dissolved phase
12 that we should be cleaning up during our source removal
13 plan, and we don't have any more break lines at all when
14 it comes to that kind of thing.

15 And it's the same thing with groundwater

16 concentrations, whether or not they constitute a source is
17 the same thing as the capillary fringes and smear zones.
18 There is no applicable standards. There is no way to
19 determine one way or the other.

20 CHAIRPERSON CLEMENT: Mr. McNeely?

21 MR. MC NEELY: Yeah, and that is an issue, but
22 there is not going to be a set standard. You will have to
23 look at trends of monitoring. It's a problem when you are
24 actually doing remediation, I understand that. So
25 hopefully when you design the system, you will design it

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1 where you actually cover the entire area that's
2 contaminated and you can watch the trends to make sure
3 that it's done, but there's not going to be a standard.
4 It's not going to be an easy thing to do.

5 MR. VANNAIS: It should be easy when you got a
6 smear zone and you design your remediation system, what's
7 the boundaries, where do you stop your remediation system
8 installation. Is it going to be GPLs or is it going to be
9 some other arbitrary number, because those GPLs are going
10 to apply to a smear zone, so the matter is now.

11 CHAIRPERSON CLEMENT: Mr. Drosendahl?

12 MR. DROSENDAHL: Yeah. It kind of depends on,
13 you know, is the capillary fringe, contamination of the
14 capillary fringe coming from the soil or from the
15 groundwater, because it doesn't make sense to clean up the
16 capillary fringe if the groundwater is the source of the
17 capillary fringe's contamination.

18 MR. VANNAIS: I think it is if the groundwater
19 storage contamination --

20 CHAIRPERSON CLEMENT: I think we can stop this.

21 MR. VANNAIS: I don't care how the contamination
22 gets there, whether it's by gravity or by transport
23 through groundwater movement of contaminated water. If
24 it's a source, it's a source. It's not been addressed.

25 CHAIRPERSON CLEMENT: I think we are getting into

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1 too much detail, but I do think that that issue is
2 actually a worthwhile issue to talk about at a technical
3 subcommittee, because we can really talk about how do you
4 do this.

5 At least from my understanding, source is fairly
6 well-defined. Soil, we're going to address maybe in the
7 future, but how do you actually apply this is really an
8 important topic, and I'd suggest that we discuss it at the
9 technical subcommittee, depending on the agenda.

10 Any other comments about that?

11 Let's move on, then. Thank you very much.

12 Summary of meeting action items, I believe I have
13 my glasses on. Is that right? We are going to have at
14 the next Policy Commission meeting a conflict of interest
15 presentation and an opportunity to ask questions of the
16 Attorney General's office. I will have given an annual
17 report in a draft copy to the Commission members before
18 the next meeting in ample time for their review.

19 Let's see. DEQ is going to report on the
20 continuing efforts to public access to data and the
21 databases as we move on with these new databases. And
22 that was on my list.

23 Did anyone else -- we were going to add the

24 agenda items that we just discussed to the technical
25 subcommittee. The financial subcommittee is next week.

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1 We're going to focus on insurance and its availability.

2 MR. GILL: Was the date and time determined, Al,
3 for the financial subcommittee?

4 MR. JOHNSON: Yes. March 3rd, 2 o'clock.

5 MR. O'HARA: Here?

6 MR. JOHNSON: 4000, 1-B, 4th floor.

7 A VOICE: And what's the issue again?

8 CHAIRPERSON CLEMENT: We're going to be dealing
9 with the insurance issue at the next financial
10 subcommittee meeting, and Andrea will be taking a lead on
11 that, the availability of insurance and cost, et cetera.

12 A VOICE: The 3rd?

13 MR. MC NEELY: The technical subcommittee is on
14 March 9th at 9 o'clock in 4001.

15 MR. JOHNSON: Yeah, the fish bowl.

16 CHAIRPERSON CLEMENT: Did anyone else capture any
17 more items that I may have missed?

18 MR. GILL: I guess if any of the members have any
19 other issues that they wanted to bring forward that they
20 thought was a goal or objective the --

21 CHAIRPERSON CLEMENT: Next meeting.

22 MR. GILL: Commission.

23 CHAIRPERSON CLEMENT: So, we will keep that
24 agenda item on for the next meeting so people can add any
25 new topics that they want.

1 Mr. Johnson, did you have any other action items?

2 MR. JOHNSON: Let's see. Oh, ADEQ is going to
3 include the closures from our contractors.

4 CHAIRPERSON CLEMENT: Great. Thank you.

5 And then Judy was going to give us an update on
6 the database and why it doesn't add up, basically give us
7 a closer estimate of those numbers.

8 MS. NAVARRETE: I don't see -- okay. My personal
9 opinion is since this database is just about in line, I'd
10 rather not spend a whole lot of time doing that, if that
11 would be acceptable.

12 MR. O'HARA: Sure.

13 CHAIRPERSON CLEMENT: The cost, what the cost
14 benefit is.

15 I don't have anything else. Anybody else have
16 any other agenda topics? Okay. So the next --

17 MR. SMITH: I have one. I'd like to move the
18 meetings to a bi monthly schedule.

19 CHAIRPERSON CLEMENT: That is very timely because
20 that's the discussion of the next Commission meeting and
21 the agenda items for the next meeting.

22 How do folks feel about having a March meeting?
23 Do you think there is enough on the plate that we need to
24 do that or would we like to take a two-month period of
25 time and meet in April? I will leave that open for

1 discussion.

2 MR. MC NEELY: I will make a comment.

3 CHAIRPERSON CLEMENT: I think most of the work
4 really needs to be done in the subcommittees, Hal and
5 Andrea's subcommittee, just like this committee would be
6 where they come back and report it. It seems like we meet
7 every week. Every month we meet, coming back to report,
8 and we haven't had time to analyze issues and get reports
9 ready, so I think there is legislation that we're working
10 on. I think we have to meet monthly, but in terms of just
11 an ongoing basis, it seems like every two months is enough
12 time to meet as long as we have our subcommittee meetings
13 addressing the major issues.

14 MR. GILL: Could we leave it open to where it
15 isn't in stone that's it's every other month, because, I
16 mean, I have no problem going to every other month unless
17 there is a financial or technical subcommittee agenda item
18 that needs to have a vote on, and if the timing happened
19 to where now it's two months away before it can be voted
20 on, because if we are trying to move things forward,
21 rather than making it every other month, can we each time
22 say or allow it to be called for that regular scheduled
23 time if there is an issue that needs to be voted on?

24 CHAIRPERSON CLEMENT: I have no objection to
25 that. Is there something, though, in March -- and I'm

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1 just thinking, I don't think we have anything in terms of
2 the next meeting that is time dependent for the Policy
3 Commission that I'm aware of at this time.

4 Is anybody else aware of anything that's time
5 dependent? I don't think we do, so I think your
6 suggestion at least personally is a good one.

7 MR. O'HARA: Can we leave it with the discretion
8 of the Chair, if something comes up, members feel
9 important to meet?

10 CHAIRPERSON CLEMENT: So, I think the decision,
11 the consensus --

12 MS. HUDDLESTON: So, we will not have a March
13 meeting I don't have to have somebody here for?

14 CHAIRPERSON CLEMENT: Well, that's what I was
15 saying, I think the consensus of the Commission is that we
16 do not need a March meeting, we will plan an April
17 meeting. If something comes up in the very near term that
18 that has to change, because I'm not going to do it in the
19 last week, but in the next week or so, I will make a
20 notice and we will continue the March meeting, but right
21 now the decision is the next meeting will be in April.
22 Okay?

23 Final comments from the public. I can't close
24 this until we have the general call to the public.

25 I have -- yes, Mr. Kennedy, and then Mr. Beck.

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1 Mr. Kelley, I'm sorry.

2 MR. KELLEY: I thought you were calling Brian Mr.
3 Kennedy.

4 CHAIRPERSON CLEMENT: At least we got the K
5 right.

6 MR. KELLEY: Dan Kelley for the record.

7 Madam Chairman, one request, since we are going
8 to go ahead and push this next meeting to April, Judy is
9 going to have all kinds of free time on her hands. That
10 report that she is going to prepare for these 100 to 70 to

11 60 applications that were returned, depending on how you
12 want to look at it, that is a very important set of
13 information for the regulated community to have to comment
14 on the new SAF Rules that are going forward, because it's
15 a very problematic issue in those rules, the ability of
16 the department to return applications, so I would like to
17 see exactly, why are we returning 10 percent or 20 percent
18 of the applications that have come in. What is the basis,
19 especially since the department doesn't have that
20 authority right now, but they seem to be implementing that
21 practice. Let's see what is the ramification on the
22 regulated community for that practice. Let's see why are
23 the majority of these applications being returned.
24 And so I would like to ask if you keep it -- not
25 ask Judy to give us such a light path, to give us that

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1 kind of detail.
2 CHAIRPERSON CLEMENT: Okay. Thank you. Thank
3 you for your comment.
4 Mr. Beck?
5 MR. BECK: Two issues. The very first one, the
6 item that I just handed up to you, the application or
7 attachment three to these preapprovals and how they're
8 affecting the SAF applications and ADEQ's statement that
9 they're not willing to pay for the time and new work
10 that's being done, that is an issue that this Policy
11 Commission should review. They have completely
12 circumvented under 1091 this Policy Commission's review of
13 the policies or whatever action that they're currently
14 doing.

15 They've also violated 1041, because the director
16 does not issue 30 days prior to implementation to the
17 regulated person.

18 This is something that needs to be looked at, we
19 need to know what it is, and also it has to be put into a
20 workable form if it's going to be implemented. Right now
21 attachment three is a complete jumble of what's in the
22 preapproval.

23 Second thing is, since you're talking about
24 meeting dates and this type of thing, I thought you had to
25 have that on the agenda items, you had to vote on it if

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1 you are going to change meeting schedules that are already
2 set up.

3 CHAIRPERSON CLEMENT: I'm going to look at my
4 attorney. Do we have to vote on setting a new meeting
5 date if scheduled, and if we do, we have an agenda item.

6 MR. O'HARA: You vote on cancellations, we never
7 have in practice.

8 CHAIRPERSON CLEMENT: I don't think so.

9 MR. MC NEELY: It does say the Commission may
10 discuss on and vote on any item listed in the agenda, and
11 you have a policy date listed on the agenda.

12 MS. HUDDLESTON: If there is insufficient agenda
13 items to meet, there is nothing in the law that says you
14 have to meet.

15 CHAIRPERSON CLEMENT: Okay. Mr. O'Hara?

16 MR. O'HARA: Mr. Beck's first point,
17 notwithstanding what he said, the new 2005 costings we
18 discussed earlier are coming out in March, and if there

19 are additional requirements of this application process,
20 it seems that that would be the time it's going to be
21 addressed to by the new level of work, and that will be
22 encompassed, I presume, when they go out and survey the
23 providers as to how much, whatever it costs, so anything
24 that we did in the next several months on that issue is
25 simply superceded July 1st.

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1 CHAIRPERSON CLEMENT: I think the other thing, it
2 may be a real worthwhile topic for the financial
3 subcommittee maybe to have two agenda items, one in
4 insurance and one on these new requirements and how are
5 they --

6 MS. NAVARRETE: Judy Navarrete. If can I explain
7 what that is.

8 CHAIRPERSON CLEMENT: Sure. Certainly.

9 MS. NAVARRETE: Well, they get the table of their
10 preapproved costs, and the attachment is not mandatory.
11 We are sending out that attachment because I've been doing
12 costs ceilings, how we're shorthanded, and this is how we
13 do cost. When you turn in a direct pay request, this
14 involves your activity code, costing code, and all of
15 those codes on it, and says direct pay request 01, 02, 03,
16 04.

17 This is how -- because we don't have a database
18 that does this automatically, we do this manually. This
19 is how we keep track of your costs. So, I thought,
20 wouldn't it be nice if we sent these out to everybody so
21 that they could keep track of their costs.

22 We do not make this mandatory. What we make

23 mandatory is that you use your actual preapproval
24 worksheet, that you use those activity codes, those cost
25 ceiling codes, and those work items that were approved.

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1 Now, this may not match your worksheet. It's
2 just a tool. Now this is not mandatory. I went down and
3 checked to make sure that nothing went on it and said that
4 this thing was mandatory. This is just for your benefit.

5 And I thought that -- we sent it out to a few
6 people to try it out. They loved it and they said, why
7 don't you just send it to everybody because it's a great
8 way to keep track of how much you've spent on that line
9 item. If you want to do a substitution waiver, you've got
10 it right there, to say I've got a thousand dollars left
11 here, why don't I put it on -- you know, I have something
12 that I didn't -- that meets the preapproval standard, so I
13 want to use this cost, and it makes the substitution very
14 much, I thought, easier. This was something to help the
15 regulated public, and in no way is it mandatory.

16 MR. BECK: Check page 2, preapproval, it says
17 attachments one, two and three will be addressed.

18 CHAIRPERSON CLEMENT: Let's take time and move
19 this on. Does anybody from the Policy Commission wish to
20 have this discussed further at the next financial
21 subcommittee meeting? And it's unfortunate Andrea is not
22 obviously with us, but I will have a conversation with
23 Andrea and also let her have the opportunity to weigh in
24 on that decision. Any comments?

25 MR. GILL: I mean, if it could move the process

1 through quicker, I think it needs to be discussed and
2 clarified, you know, what it's used for and how it's used,
3 because, I mean, I have used something like this before,
4 but, yes, it sounds like it needs some clarification.
5 But, I mean, anything that could be used to move the
6 process through quicker, maybe it's just the need to get
7 the word out how it's supposed to be used.

8 MR. O'HARA: I think her explanation was very
9 helpful. If she had added something to the top of that
10 page, this is a tool, it could eliminate some confusion.

11 CHAIRPERSON CLEMENT: I think that would be very
12 helpful.

13 MS. NAVARRETE: Okay.

14 CHAIRPERSON CLEMENT: Unless we have any
15 additional -- Mr. Smith.

16 MR. SMITH: Just to maybe reiterate my comments
17 about going to a bi-monthly schedule, Tamara is right, the
18 Chairperson does have the authority to change any one
19 meeting, but, you know, to keep us -- make sure we're
20 within the law, then I think it should still be put on the
21 schedule if we're going to change the entire year's
22 schedule around.

23 CHAIRPERSON CLEMENT: Okay. Final general
24 comment from the public. Mr. Kelley?

25 MR. KELLEY: If we are going to not hold the

1 March meeting, I would ask you to please ask the financial
2 and technical subcommittees to review the cost ceilings

3 that the ADEQ is going to release and in March so that
4 they can respond to this body at the April meeting.

5 And if we're going to go to the bi-monthly meeting
6 schedule, then this Commission needs to be taking that
7 long range view and using subcommittees the right way, you
8 need to be paying attention to that issue, those very kind
9 of issues right there just like that.

10 So, sorry to keep you guys here, but if we're
11 going to go to bi-monthly meetings, which I don't have a
12 problem with, then we need to get the subcommittees --

13 MR. GILL: The issue it raises, typically when we
14 have a Commission meeting and the costing has come out
15 that are handed out, so we need to make sure that we think
16 ahead to where, you know, Commission members, including
17 the subcommittees, are getting a copy of whatever needs to
18 be discussed in the subcommittees, then I know what to put
19 on the agenda and everything and timing.

20 MR. MC NEELY: We can make it available.

21 CHAIRPERSON CLEMENT: I think that, as a general
22 policy, something new that has been released by the agency
23 that has a particular import to either the financial or
24 the technical aspects of the program, and we don't have
25 the opportunity because we're meeting on a bi-monthly

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1 schedule, that those should be available as agenda items
2 to the subcommittees. Is that acceptable to the
3 Commission? Then that way we're not holding the
4 subcommittees back from addressing new issues or new
5 materials that come out from DEQ.

6 And we may or may not be able to meet bi-monthly

7 because, depending on what's in front of us, I can agree
8 to it this next meeting, I don't think we have a real need
9 to meet in March, but after that, I think it's going to be
10 dependent on where the program is and where we are on your
11 views and comments on the materials.

12 So, I probably wouldn't want to see us send out a
13 new schedule assuming we're going to be bi monthly, I guess
14 is the bottom line so --

15 Okay. Any other comments? Questions?

16 Okay. With that, the February 23rd, 2005 UST
17 Policy Commission meeting is adjourned. Thank you all.
18 Appreciate your participation.

19 (11:02 A.M.)

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C E R T I F I C A T E

8 I HEREBY CERTIFY that the proceedings had
9 upon the foregoing hearing are contained in the shorthand
10 record made by me thereof and that the foregoing 84 pages

11 constitute a full true and correct transcript of said
12 shorthand record all done to the best of my skill and
13 ability.

14 DATED at Phoenix, Arizona, this 23rd day of
15 February, 2005.

16

17 Deborah J. Worsley Girard
18 Certified Court Reporter
19 Certificate No. 50477

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